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Supreme Court of the United States.

October Term, 1969.

No. 841.

FRANCES C. DENEHY, *Petitioner*,

v.

UNITED STATES OF AMERICA, THE DISTRICT DIRECTOR OF INTERNAL REVENUE, BOSTON, MASSACHUSETTS DISTRICT AND EDWIN F. HANNON, JR., EXECUTOR, *Respondents*.

RESPONDENT EDWIN F. HANNON'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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UNITED STATES OF AMERICA, THE DISTRICT DIRECTOR OF INTERNAL REVENUE, BOSTON, MASSACHUSETTS DISTRICT AND EDWIN F. HANNON, JR., RECEIVER, *Respondents*.

RESPONDENT EDWIN F. HANNON'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

The petitioner seeks by her petition to upset the decision of the United States District Court for the District of Massachusetts, unreported, and so much of the decision of the Court of Appeals for the First Circuit reported at 275 F. 2d 234 (1960) as affirmed the decision of the District Court.

Question Presented.

Whether the petitioner, who was a party to a judgment of the United States District Court for the District of Massachusetts entered on April 23, 1958, which judgment

indicated that the United States by virtue of a tax lien had a title paramount to the petitioner's to certain real estate in Medford, Massachusetts, was properly enjoined by that Court from proceeding further with foreclosure proceedings on an alleged mortgage in the Land Court of the Commonwealth of Massachusetts.

Statute Involved.

26 U.S.C. Section 7403.

Statement of the Case.

This petition arises from an action by the United States to recover delinquent taxes. The case does not involve a conflict of decisions between different Courts of Appeals, nor new or doubtful questions of law, nor a conflict between the decision of the Court of Appeals and the applicable decisions of this Court or any other Court. The petition raises no matter of public interest or importance.

On June 22, 1955, the United States filed a complaint seeking to recover delinquent taxes of $156,686.88 assessed against taxpayers Charles M. Fauci Company, Inc., and Charles M. Fauci (R. 62-67). The complaint recited the assessment of deficiencies against the taxpayers, creating tax liens in favor of the United States on the taxpayers' property and rights to property (pars. 4, 8), the filing of notices of lien (pars. 6, 10), that the taxpayers had rights in certain real estate at 127, 129-131 and 139-141 Mystic Avenue, Medford, and 41-43 Stanhope Street, Boston (par. 15), that the United States was entitled to such properties in the right of the taxpayers (pars. 15, 16), and that during the period involved, while the taxpayers were in-

solvent, they conveyed property to various named defendants, among them Frances C. Denehy, without giving adequate consideration for the property (pars. 13, 14). It prayed for personal judgments of $156,686.68 against the defendant taxpayers (prayers 1, 2), satisfaction by the other named defendants of the tax claims to the extent of transfers to them of the taxpayers' properties (prayer 5), and enforcement of the tax liens of the United States against the properties and rights to property of the defendant taxpayers (prayer 6). Petitioner Frances C. Denehy filed an answer[1] (R. 67-68), as did the other defendants. Following dismissal by the Court of Appeals of an appeal from an interlocutory order in the case (*United States* v. *Fauci*, 242 F. 2d 237 (1957)), a trial was had on the issue of liability, and a verdict was returned for the United States on March 12, 1957. On April 22, 1958, a trial before the District Court was had on the issue of damages. On April 23, 1958, judgment was entered, ordering, *inter alia*, that the real estate be sold and decreeing that the claim and lien of the United States to the real estate had priority over the claims of all the parties to the action (R. 2-4). The judgment was later amended, on October 1, 1958, and November 4, 1958, in certain respects not here material.[2]

An appeal from the judgment of April 23, 1958, to the Court of Appeals was taken by Frances C. Denehy. The appeal was dismissed for want of diligent prosecution on May 11, 1959 (R. 62).

On or about August 21, 1959, the petitioner filed a petition in the Land Court of the Commonwealth of Massachusetts (R. 20) against Edwin F. Hannon, Jr., Receiver.

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[1] Frances C. Denehy nowhere in her answer in the main case referred to or set up the mortgage which in her Massachusetts Land Court petition she claimed to have on 139-141 Mystic Avenue.

[2] These were the only occasions when the judgment was amended.

It is not disputed[3] that the property in question, on which Frances Denehy claimed in her petition to have a mortgage, is also the property located at 139-141 Mystic Avenue, Medford. See argument of Denehy's attorney (R. 37, 39). The Receiver, on October 6, 1959, filed a petition for restraining order and other relief (R. 16-20), alleging that Denehy had filed the Land Court petition, a copy of which was attached (par. 2), and that the Land Court petition was a collateral attack on the judgment of April 23, 1958, and constituted contempt of the Court (par. 8). The petition prayed that Denehy be temporarily and permanently enjoined from attempting to foreclose the mortgage referred to in the Land Court petition (prayers 1, 2), that Denehy be permanently enjoined from claiming title to, or any other interest in, the property referred to in the judgment (prayer 3), and that Denehy be ordered to execute and deliver to the Receiver a discharge of the mortgage (prayer 4). After hearings on these prayers, at which times the bringing of the Land Court petition by Denehy was conceded (see argument of Denehy's counsel, R. 29, 35; 36), the prayers were granted (R. 32, 33, 49, 50), various motions of Denehy attacking the Receiver's petition were denied (R. 48, 49) and an order was entered (R. 49, 50) permanently enjoining Denehy from claiming title to or any other interest in the property referred to in the judgment and commanding that she deliver to the Receiver

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[3] *E.g.* (R. 39): "Mr. Lewis . . . The mortgage Frances C. Denehy seeks to foreclose here is on a parcel of real estate in Medford, known and numbered 139-141 Mystic Avenue . . ." Denehy filed an answer to the petition of Receiver for restraining order and other relief on October 20, 1959 (R. 53-56). Since the answer was filed after the District Court had finally ruled on the Receiver's petition, following the last order appealed from (order on permanent injunction, entered October 15, 1959, R. 49), by five days, it is not properly part of the record, notwithstanding its inclusion by Denehy in her Record Appendix.

a discharge of the mortgage. The property was bid in at a public sale on October 17, 1959 (petition for confirmation of sale, R. 50-52) and the sale was confirmed by order [4] on October 19, 1959 (R. 53). Denehy's notice of appeal was filed on October 22, 1959 (R. 59). The appeal was taken from the allowance of the Receiver's petition for restraining order and other relief, from the orders granting temporary and permanent injunctions, from the order directing Denehy to deliver a discharge of her mortgage to the Receiver, and from denial of her motions to dismiss the petition asserting lack of jurisdiction and that the Receiver was not a proper party.

The judgment of the Court of Appeals entered on February 24, 1960, upheld the judgment of the District Court except insofar as that judgment ordered the petitioner to execute a discharge of the mortgage in question (R. 78).

Argument.

Paragraph 5 of the judgment of the District Court stated:

> "That the claim and lien of the United States with respect to the property located at 127 Mystic Avenue, Medford, 129-131 Mystic Avenue, Medford, 139-141 Mystic Avenue, Medford, and 41-43 Stanhope Street, Boston, has priority over the claims of all parties to this action." (R. 2.)

The District Court was required by 26 U.S.C. Sec. 7403(C) "to adjudicate all matters involved [in the action] . . . and finally determine the merits of all claims to and

[4] It should be noted that neither appellant appealed from the order confirming the sale.

liens upon the property"; and it was empowered, to effectuate such adjudication, to "decree a sale of such property . . . and a distribution of the proceeds of such sale according to the findings of the Court . . ." The petitioner was represented by counsel, who filed an answer in her behalf (R. 61, 67-71), and took an appeal from the judgment of the District Court. This appeal was dismissed for want of diligent prosecution on June 15, 1959. Her claim of a mortgage on the real estate in question as against the United States is res adjudicata.

The orders of the District Court enjoining the petitioner's action in the Land Court of the Commonwealth of Massachusetts were well within the accepted powers of an Equity Court. *Alexander* v. *Hillman*, 296 U.S. 222, 239 (1935). *Wabash Railroad Co.* v. *Adelbert College of the Western Reserve University*, 208 U.S. 38, 54 (1908). *Murphy* v. *John Hofman Co.*, 211 U.S. 562, 569 (1909). *Julian* v. *Central Trust Co.*, 193 U.S. 93 (1904). *Bethke* v. *Grayburg Oil Co.*, 89 F. 2d 536 (5th Cir. 1937); cert. den. 302 U.S. 739. *Jackson* v. *Carter Oil Co.*, 179 F. 2d 524 (10th Cir. 1950). *City of Fresno* v. *Edmonston*, 131 F. Supp. 421 (S.D. Cal. 1955). 28 U.S.C. Sec. 2283. The petitioner's attempt to realize upon her alleged mortgage constituted a collateral attack upon the judgment of the District Court and that Court was well within its powers in enjoining any further prosecution of the State Court proceedings. *Wabash Railroad Co.* v. *Adelbert College of the Western Reserve University, supra.*

In addition to suggesting that the District Court was without jurisdiction to hear the Receiver's petition for an injunction, the petitioner suggests that, because counsel for the Receiver filed an appearance in the Land Court of the Commonwealth of Massachusetts, he could not seek to restrain petitioner from proceeding in the State Court and urges that this action creates a question for review by

this Court. Such a suggestion ignores the long-established ancillary power of the District Court to enforce its judgments and ignores the fact that petitioner and the other defendants were still before the District Court. Further citation of authorities would be redundant.

The petitioner suggests that she has been deprived of her property without due process of law under the Fifth Amendment to the Constitution of the United States. She states that the sale of her property to pay for the debts of another, as ordered by the Court of Appeals, creates the Constitutional violation. However, by the judgment of both Lower Courts, the petitioner has no proprietary right in the real estate against the United States. The petitioner's argument on this point is baseless.

Conclusion.

This case does not present any novel or substantial issues of law. The petitioner fails to recognize that any claim to a mortgage which she may have has been invalidated as against the United States. It is respectfully submitted that the petition fails to present a question calling for review by the Supreme Court of the United States.

Respectfully submitted,

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